



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

cn

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,185	08/23/2001	Michel Willy	6464.01	5478

25763 7590 08/13/2004

DORSEY & WHITNEY LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
50 SOUTH SIXTH STREET  
MINNEAPOLIS, MN 55402-1498

EXAMINER

MENDEZ, MANUEL A

ART UNIT PAPER NUMBER

3763

DATE MAILED: 08/13/2004

21

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/938,185

Applicant(s)

MICHEL WILLY

Examiner

Manuel Mendez

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 28-45 is/are pending in the application.
- 4a) Of the above claim(s) 28-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

**Claims 28-39** are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 40-45** are rejected under 35 U.S.C. 103(a) as being unpatentable over **[Brinkerhoff, et al. or Cuschieri, et al.] in view of Crane, et al., and Coleman, et al.** Brinkerhoff, et al. or Cuschieri, et al., shows in figure 5 of each respective patent, a port body having a selective accessible exposed portion external to the body, and further, a self-closing diaphragm. Brinkerhoff, et al., shows in figure 5, a tube inherently capable of infusing or aspirating fluids to and from the body. However, neither Brinkerhoff, et al. or Cuschieri, et al., disclose the step of aspirating body fluids in the aspirating tube wherein the body fluid is tested to determine the concentration or presence of an element in the body fluid.

The Crane, et al., Patent shows in figure 3, a Cranial bolt having guide tubes (21,22). Specifically, in column 4, line 10; the specification states, "the bolt can be used to install single or multi-lumen catheters, sensors or drainage or sampling tubes into

various parts of the brain". Based on the above description of the capabilities of the Cranial Bolt, guide tubes (21,22) can be used to infuse drugs, aspirate or drain a selected site, and even introduce a sensor. Accordingly, for a person of ordinary skill in the art, modifying the ports disclosed by Brinkerhoff, et al. or Cuschieri, et al., with guide tubes capable of infusing fluids, draining fluids, and or sensing body fluids, would have been considered obvious design choices.

In relation to the analysis of body fluids within the aspiration tube or outside the port body, the examiner introduces the Coleman, et al., and Brain Patents. In figures 2a-2c and 3, the Coleman, et al., Patent demonstrates the conventionality of sensing and analyzing body fluids within an aspiration tube. Please note how the plunger is used to aspirate fluids so that said fluids can establish contact with a sensor.

Concerning the capability of analyzing fluids after the step of aspiration from the tube, the Brain Patent states in column 6, lines 29-33, "a steady flow of fluid may be drawn from tube 36...thereby at the same time aspirating, for external collection, analysis, and/or discard". Accordingly, based on the teachings of Coleman, et al., and Brain, the analysis of body fluids within an aspiration tube or outside the port body would have been considered by a person of ordinary skill in the art an obvious design choice.

### ***Conclusion***

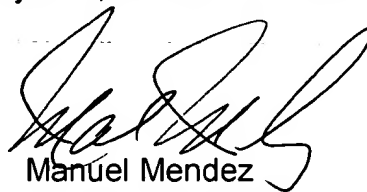
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose

Art Unit: 3763

telephone number is 703-308-2221. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Manuel Mendez  
Primary Examiner  
Art Unit 3763

MM